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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/575,334	05/22/2006	Peter Marten Van Der Horst	ACM3020PIUS	3627
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AKZO NOBEL INC. LEGAL & IP 120 WHITE PLAINS ROAD, SUITE 300 TARRYTOWN, NY 10591				
EXAMINER				
ADMASU, ATNAF S				
ART UNIT		PAPER NUMBER		
1796				
NOTIFICATION DATE		DELIVERY MODE		
11/12/2009		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

IPANLPATENT@AKZONOBEL.COM

Office Action Summary**Application No.**

10/575,334

Applicant(s)VAN DER HORST, PETER
MARTEN**Examiner**

ATNAF ADMASU

Art Unit

1796

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 June 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4 and 6-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4 and 6-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. Claims 1, 2, 4 and 6-10 are pending as amended on 30 June 2009, claims 7-10 are new and claims 3 and 5 are cancelled.
2. The text of those sections of Title 35, US Code not included in this action can be found in a prior Office Action.

Response to Amendment

3. Applicant's importation of the limitation of claims 3 and 5 into independent claim 1 and cancellation of claims 3 and 5 has been fully considered and overcomes the following:

The rejection of claims 1 and 2 under 35 U.S.C. 102(a) as being anticipated by Canadian Patent Publication CA2508234 - US Patent Publication 2006/0029711 (Theeuwes hereinafter) being the US equivalent of CA2508234 - has been withdrawn.

The rejection of claims 1 and 2 under 35 U.S.C. 102(a) as being anticipated by Canadian Patent Publication CA2463107 - US Patent Publication 2005/0031757 (Boevink hereinafter) being the US equivalent of CA2463107 - has been withdrawn.

4. With regards to Applicant's argument that US Patent 6,281,172 (Warren hereinafter) fails to show certain features of Applicant's invention, it is noted that the features upon which Applicant relies (i.e., the gel strength of the fluid's composition builds up within the first 10 seconds after circulation) are not cited in the rejected

claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1 and its dependent claims 2, 4 and 6-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1 line 8, the degree of polymerization for 4 wt % CMC is missing and render the claim indefinite. For the purpose of examination against the prior art, the degree of polymerization for the 4 wt % CMC was construed to recite, "...DP of less than 1,500..."

Claim Rejections - 35 USC § 103

7. Claims 1, 2, 4 and 6-10 are rejected under 35 U.S.C. 102(a) as being unpatentable over Canadian Patent Publication CA2463107 in view of US Patent 6,281,172 (Warren hereinafter). - US Patent Publication 2005/0031757 (Boevink hereinafter) is the US equivalent of CA2463107 and all citations herein are taken therefrom.

Boevink teaches the use of a carboxymethyl cellulose (CMC) wherein the CMC is characterized by forming a gel at 25C° after high shear dissolution in a 0.3 wt % aqueous sodium chloride solution, the final content of the CMC in the aqueous sodium chloride solution being 1 wt % for a CMC having a degree of polymerization (DP) of >4,000, 1.5 wt % for a CMC having a DP of 3,000-4,000, 2 wt % for a CMC having a DP of 1,500-3,000, and 4 wt % for a CMC having a DP of <1,500, the gel being a fluid having a storage modulus (G') which exceeds the loss modulus (G'') over the entire frequency region of 0.01-10 Hz when measured on an oscillatory rheometer operating at a strain of 0.2 (Abstract). The amount of CMC to be used varies and typically an amount of 0.05 to 1.0 wt % is used ([0037]).

Boevink further discloses the use of these CMC mixtures lead to an improvement in gelling properties and not give rise to fluid loss, syneresis, and jelly formation ([0009]).

Boevink's teachings are pertinent to the particular problem with which the instant application is concerned, i.e., to provide a water-based drilling fluid composition comprising a carboxymethyl cellulose which has good fluid loss reduction and improved gelling properties compared to conventional CMC (see instant application [0011] and [0014]).

Boevink does not disclose expressly the water-based drilling fluid composition further comprise a smectite type of clay and electrolytes.

Warren teaches drilling fluids are generally composed of liquids, e.g., water, petroleum oils, synthetic oils and other organic liquids; dissolved inorganic and organic additives; and suspended, finely divided solids of various types (col. 1, lines 36 – 39). Clay and polymer make up low solid in drilling fluid to enhance viscosity and filtration controls (col. 2, lines 57 – 59). Bentonite, which is a smectite type clay is by far the most commonly used clay in drilling muds because it provides excellent rheological and filtration properties to the mud, especially in combination with electrolytes like carbomethyl cellulose (CMC) (col. 3, lines 5 – 10). Boevink's teaching of carboxymethyl cellulose in processed meat to advantageously produce higher water binding capacity and not giving rise to a fluid loss is analogous to Warren's clay and polymer that make up low solid in drilling fluid to enhance viscosity and filtration controls.

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to utilize Warren's smectite type clay in the carboxymethyl cellulose composition of Boevink. The rationale to do so would have been the motivation provided by the teaching of Warren that to do so would provide excellent rheological and filtration properties to a mud, especially in combination with electrolytes like carbomethyl cellulose (CMC) (col. 3, lines 5 – 10).

Double Patenting

8. Claims 1, 2, 4 and 6 - 10 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-6 over copending application No. 10/537,199 in view of US Patent 6,281,172. Although the

conflicting claims are not identical, they are not patentably distinct from each other because 11/537,199 and 11/575,334 are related to CMC composition, both comprising exact CMC composition would render the present claims obvious to one of ordinary skill in the art.

This is a provisional obviousness-type double patenting rejection.

9. Claims 1, 2, 4 and 6 - 10 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-6 of copending Application No. 10/490,998 in view of US Patent 6,281,172. Although the conflicting claims are not identical, they are not patentably distinct from each other because 11/490,998 and 11/575,334 are related to CMC composition, both comprising exact CMC composition would render the present claims obvious to one of ordinary skill in the art.

This is a provisional obviousness-type double patenting rejection.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to ATNAF ADMASU whose telephone number is (571)270-5465. The examiner can normally be reached on M-F 8:00-5:30, Flexible Schedule.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

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USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/ASA/

/Timothy J. Kugel/
Primary Examiner, Art Unit 1796